

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DANIEL CASTILLO,

Plaintiff,

v.

**Civil Action 2:22-cv-3720
Judge Sarah D. Morrison
Magistrate Judge Chelsey M. Vascura**

**MLG CONSTRUCTION OHIO, LLC,
et al.,**

Defendants.

ORDER

This matter is before the Court on Plaintiff's Motion for Alternative Service (ECF No. 42). Therein, Plaintiff asserts that, earlier in the case, Plaintiff successfully effected personal service of the Complaint on Defendant Cesar Gonzalez (who is also the registered agent for Defendant MLG Construction Ohio, LLC) at his home at 372 Postle Road in Columbus, Ohio (which Plaintiff represents is also the address on file with the Ohio Secretary of State for MLG Construction's registered agent). However, Plaintiff asserts that Mr. Gonzalez is now evading Plaintiff's attempts to serve Mr. Gonzalez and MLG Construction of the Amended Complaint, which service is required by the Court's order of September 8, 2023. Plaintiff represents that Mr. Gonzalez "will not answer the door or cooperate on service." (Mot. 4, ECF No. 42.) Plaintiff's process server also submitted an affidavit averring that he attempted personal service at the Postle Road residence on November 2, 2023, and spoke with someone there who stated Mr. Gonzalez's mail still comes to that house. (Phillips Aff. 2, ECF No. 42-1.)

Plaintiff requests leave to serve Mr. Gonzalez and MLG Construction via the alternative means of “leaving a true and correct copy of the citation and petition¹ with anyone over sixteen years of age at the following address: 372 Postle Road, Columbus, OH 43228 U.S.A.” or “affixing a copy of the citation and petition to the door of 372 Postle Road, Columbus, OH 43288 U.S.A.” (Proposed Order, ECF No. 42-3.)

Plaintiff has not demonstrated grounds for service by the alternative means he seeks. As an initial matter, Plaintiff and his process server refer to service attempts at “372 Postle Road,” but the Ohio Secretary of State lists MLG Construction Ohio, LLC’s registered agent address as “372 Postle Blvd.” (Agent Information, ECF No. 42-2.) Accordingly, it is not clear that Plaintiff’s personal service attempts have targeted the correct address. And even if Plaintiff’s process server attempted service at 372 Postle Blvd., the process server’s affidavit reflects at most one unsuccessful service attempt at that address on November 2, 2023. The process server also avers that Mr. Gonzalez was successfully served via certified mail at the Postle residence earlier in the case.

Moreover, Plaintiff’s Motion does not reference his attempt to serve Defendants with the Amended Complaint via certified mail through the Clerk of Court. At Plaintiff’s request, the Clerk issued certified mail service on Defendants, which was returned marked “Return to Sender/Unclaimed/Unable to Forward.” (See ECF Nos. 40–41.) Under these circumstances, Federal Rule of Civil Procedure 4(e)(1) and Ohio Rule of Civil Procedure 4.6 would typically permit Plaintiff to complete service by “fil[ing] with the clerk a written request for ordinary mail service.” (Ohio R. Civ. P. 4.6(D).) However, Plaintiff’s request for certified mail service asked

¹ The Court assumes that Plaintiff intended to refer to the summons and Amended Complaint, rather than a “citation and petition.”

the Clerk to mail service documents to “372 Postile Blvd.,” rather than “372 Postle Blvd.”

Accordingly, it is not clear that Plaintiff’s certified mail service attempts targeted the correct address, either.

These facts are not sufficient for the Court to conclude that Mr. Gonzalez is evading service such that service by means other than those provided for by the Federal Rules of Civil Procedure is appropriate. Accordingly, Plaintiff’s Motion for Alternative Service (ECF No. 42) is **DENIED**. Plaintiff must effect service of process of the summons and Amended Complaint over Defendants pursuant to Federal Rule of Civil Procedure 4 no later than **FEBRUARY 16, 2024**.

IT IS SO ORDERED.

/s/ Chelsey M. Vascura
CHELSEY M. VASCURA
UNITED STATES MAGISTRATE JUDGE